

General Information Letter: An overpayment shown on a return and which the taxpayer properly elects to credit against the subsequent year's estimated tax liability will be treated as a timely payment of the first quarterly installment of estimated taxes due in that subsequent year.

November 22, 2000

Dear:

This is in response to your letter dated November 13, 2000, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.revenue.state.il.us.

In your letter you have stated the following:

This letter is in response to a phone conversation I had today with the Illinois Department of Revenue, Taxpayer Services Division. My clients received a notice regarding interest and penalties assessed on their timely-filed 1999 Form IL-1040.

When speaking with the taxpayer services representative, I was calling to verify that the 1998 overpayment had been credited to the 1999 Form IL-1040 account. The representative, Mr. Jim Drendel, informed me that the Late Payment penalty assessed per the attached copy of the notice was removed and replaced by an Underpayment Penalty, much higher than the amount reported on the 1999 Form IL-2210 attached to the return.

I am writing to inform you of a discrepancy in the calculation of my client's underpayment penalty. Mr. Drendel told me that the IL-2210 penalty was higher than was originally reported because the 1998 overpayment was being credited on November 3, 2000 – the date the 1998 return was processed – instead of April 15, 1999 – the date the overpayment would have been posed had the 1998 return been timely filed. The filing instructions for 1999 Form IL-2210 specifically state that any prior year overpayments being credited to 1999 be reported on Form IL-2210, line 11 for Quarter 1. The difference represents \$146.00 increase in the underpayment penalty, plus interest assessed on the penalty.

I am remitting a check to Illinois Department of Revenue for the balance due, plus interest and penalties on the assessed balance. However, I respectfully request that the 1998 overpayment be credited to my client's account effective April 15, 1999 per the instructions to the form. Mr. Drendel, acting upon the advice of his supervisor, informs me that there has been a change in Illinois statutes stating that the overpayment applied on a late return be recorded as of the date the return was processed. However, he could not give me a statute cite as reference for this change. If this is correct, please call me regarding the cite in question. I have several Illinois clients and do not want to get caught in this predicament again.

Response

Section 909(b) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 *et seq.*) provides that:

The Department may prescribe regulations providing for the crediting against the estimated tax for any taxable year of the amount determined by the taxpayer or the Department to be an overpayment of the tax imposed by this Act for a preceding taxable year.

Pursuant to this authority, the Department of Revenue has promulgated 86 Ill. Adm. Code Section 100.9400(b), which states:

An individual or corporate taxpayer by filing a return for the taxable year using the appropriate form and checking the appropriate box thereon in accord with the instructions shall have the amount of any overpayment or portion thereof credited thereafter against his estimated tax liability for the next succeeding taxable year.

Neither of these authorities limits its application to timely filed returns. Accordingly, an otherwise valid election to apply an overpayment shown on a return will be valid even if the return is filed after its due date (as extended), provided that the return must be filed within the statute of limitations period established in Section 911 of the IITA.

As you note in your letter, the instructions for Form IL-2210 provide that, in computing the penalty for underpayment of estimated tax for a particular year, an overpayment shown on the taxpayer's return for the prior year and which the taxpayer elected to apply against his or her estimated tax liability shall be treated as a timely payment toward the first installment of estimated tax due for the current year. The instructions do not limit their application to timely-filed returns.

Section 4(c) of the Taxpayers' Bill of Rights states that the Department of Revenue has the duty:

To abate taxes and penalties assessed based upon erroneous written information or advice given by the Department.

Accordingly, the instructions entitle your clients to have the 1998 overpayment applied as a timely payment toward the first installment of estimated taxes due in 1999, subject to verification and possible adjustment of the actual amount of overpayment for 1998. For example, the documentation you enclosed with your request indicate that the amount of the 1998 overpayment applied to 1999 estimated tax liabilities was reduced by the late filing penalty imposed for 1998. The penalty for failure to make timely payment of estimated taxes for 1999 will be recomputed accordingly.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

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Sincerely,

Paul S. Caselton
Deputy General Counsel -- Income Tax